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Date:

August 08, 2011

In Re:

### LEGEND:

Parent =

State A =

State B =

Business A =

Business B =

Sub 1 =

LLC1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Newco =

Newco Sub =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

Sub 17 =

Sub 18 =

Sub 19 =

Sub 20 =

Sub 21 =

Sub 22 =

Sub 23 =

Sub 24 =

Sub 25 =

Sub 26 =

Sub 27 =

Sub 28 =

Sub 29 =

Sub 30 =

Sub 31 =

Sub 32 =

Sub 33 =

Sub 34 =

Sub 35 =

Sub 36 =

Sub 37 =

Sub 38 =

Sub 39 =

Acquiring =

Merger Sub =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

aa =

bb =

cc =

dd =

ee =

ff =

Dear :

This letter responds to your April 6, 2011 request, supplemented by your letter dated May 23, 2011, for rulings on certain federal income tax consequences of the Completed Transactions (defined below) which effected the sale of Parent (owning Business A) to Acquiring and the split-off of Newco (owning Business B) to Parent's shareholders. The information provided in that request and in later communications is summarized below. The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### **Summary of Facts**

Parent is a State A corporation whose common stock was publicly traded before the Completed Transactions. Parent also had a class of preferred stock outstanding, which was not publicly traded. Before the Completed Transactions, Parent was the parent of an affiliated group of corporations filing a life-nonlife consolidated tax return (the "Parent Group") that conducted Business A and Business B.

Parent owned all of the outstanding stock of Sub 1, a holding company that owned subsidiaries that conducted both Business A and Business B. Parent also owned all of the outstanding limited liability company interest of LLC1, a disregarded entity for U.S. federal income tax purposes, which conducted a part of Business A. Parent also owned the stock of Sub 2, Sub 3, Sub 4, and Sub 5. Sub 1 owned all of the outstanding stock of Sub 6, which conducted the majority of Business A and a portion of Business B; Sub 7, which conducted a part of Business B and a part of Business A; and Sub 8, which conducted a part of Business B. Sub 1 also owned the stock of Sub 9, Sub 10, Sub 11, and Sub 12.

In preparation for the Completed Transactions below, Parent formed Newco, a State B corporation, and Newco formed Newco Sub, a State B limited liability company. Newco Sub elected to be treated as a corporation for U.S. federal income tax purposes under Treas. Reg. § 301.7701-3, effective before the Completed Transactions.

In order to separate Business B from Business A, Parent transferred Sub 2, Sub 3, Sub 4, and Sub 5 (the “Parent Directly Transferred Targets”) to Newco Sub; and Sub 1 transferred Sub 7, Sub 8, Sub 9, Sub 10, Sub 11, and Sub 12 (the “Sub 1 Directly Transferred Targets”, and together with the Parent Directly Transferred Targets, the “Newco Directly Transferred Targets”) to Newco Sub. Certain of the Newco Directly Transferred Targets owned direct and indirect subsidiaries (Sub 13 through Sub 39, inclusive) (the “Newco Indirectly Transferred Targets” and together with the Newco Directly Transferred Targets, the “Newco Transferred Targets”).

Sub 1, LLC1, and Sub 6 were not transferred to Newco Sub and remained with Parent (together with Parent, the “Business A Entities”).

Before the Completed Transactions, each of Sub 1 through Sub 39, Newco, and Newco Sub was treated as a corporation for U.S. federal income tax purposes and was a member of the Parent Group.

Acquiring is a publicly-traded State B corporation. Acquiring formed Merger Sub, a State A limited liability company, in connection with the Completed Transactions. The business purpose of the Completed Transactions is to separate Business A and Business B, and to facilitate the acquisition of Parent (conducting Business A).

### **Completed Transactions**

The Completed Transactions were effected by the steps described below and were completed on Date 5:

(i) On Date 3, Parent and Sub 1 entered into a binding agreement to sell nonvoting preferred stock of Newco that Parent and Sub 1 would receive pursuant to Step (vii) (the “Newco Preferred Stock”, and the binding agreement, the “Preferred Stock Sale Agreement”) to certain investors (the “Investors”).

(ii) On Date 4, Sub 8 and Sub 6 entered into a reinsurance agreement (the “Reinsurance Agreement”), which was made effective as of Date 2. Under the Reinsurance Agreement, Sub 8 will provide reinsurance in respect of all risks, liabilities and obligations of Sub 6 related to insurance policies and annuity contracts other than those related to Business A, which policies and contracts are in force as of the effective time of the Merger (as defined below) or are issued by Sub 6 up to six months after the date of the Merger Agreement. Under the Reinsurance Agreement, Sub 6 transferred to Sub 8 all rights and obligations not primarily related to Sub 6’s Business A. In connection with the Reinsurance Agreement, Sub 8 and Sub 6 entered into an administrative services agreement, under which Sub 8 will be responsible for the provision of certain customary services and costs in connection with the policies and contracts for which it will provide reinsurance pursuant to the Reinsurance Agreement.

(iii) At or before the effective time of the Merger (the “Effective Time”), Sub 7 and a subsidiary of Acquiring (the “Acquiring Reinsurer”) entered into a novation agreement (the “Novation Agreement”), pursuant to which Sub 7 agreed to novate to the Acquiring Reinsurer all of its risks, liabilities and obligations related to Business A. The Novation Agreement became effective as of the Effective Time, with economic effect as of Date 1.

(iv) On Date 5, Newco issued Newco common stock and Newco Preferred Stock to Newco Sub.

(v) The Business A Entities, on the one hand, and Newco, Newco Sub, and the remaining subsidiaries of Parent other than the Business A Entities (collectively, the “Business B Entities”), on the other hand, settled all intercompany accounts between the Business A Entities and Business B Entities.

(vi) All remaining assets and liabilities primarily related to Business A not already owned by the Business A Entities and certain other specified assets and liabilities, were transferred to and/or assumed by the Business A Entities, and all remaining assets and liabilities primarily related to Business B not already owned by Business B Entities, and certain other specified assets and liabilities (which included cash to provide Newco with sufficient working capital), were transferred to and/or assumed by the applicable Business B Entities.

(vii) Parent transferred to Newco Sub all of the stock of the Parent Directly Transferred Targets, and Sub 1 transferred to Newco Sub all of the stock of the Sub 1 Directly Transferred Targets, in each case, in consideration for a pro rata share of (A) the shares of Newco common stock held by Newco Sub and (B) the shares of Newco Preferred Stock held by Newco Sub. The transfers of the Newco Directly Transferred Targets described herein are referred to as the “Transfers”.

(viii) Parent and Sub 1 immediately sold the Newco Preferred Stock received in Step (vii) to the Investors for cash pursuant to the Preferred Stock Sale Agreement described in Step (i) above. Investors unrelated to Parent or Newco purchased approximately \$aa of the Newco Preferred Stock, and Investors who were officers, directors, or significant shareholders (or affiliates of officers, directors or significant shareholders) of Parent purchased \$bb (less than 50 percent) of the Newco Preferred Stock. The Newco Preferred Stock sold in this Step (viii) comprised all of the outstanding and issued Newco Preferred Stock.

(ix) Sub 1 distributed to Parent all of the shares of Newco common stock and cash it received pursuant to Step (viii).

(x) Parent used the cash received pursuant to Step (viii) and Step (ix) to repay existing indebtedness (in part) and expenses.



(xi) Merger Sub merged with and into Parent, with Parent comprising the surviving corporation (the “Merger”). In the Merger, (A) holders of Parent common stock received cc shares of Newco common stock and \$dd in cash in exchange for each share of Parent common stock held, (B) holders of Parent preferred stock received the same closing consideration that ee shares of Parent common stock would have received in exchange for each share of Parent preferred stock held, and (C) Acquiring’s membership interests in Merger Sub were converted into shares of Parent common stock.

Immediately after the Merger, Acquiring owned 100 percent of the stock of Parent, the Investors held all of the Newco Preferred Stock, the Parent’s former common and preferred shareholders had received cash and held all of the Newco common stock, and neither Parent nor Sub 1 (nor any of their affiliates) owned any stock in Newco.

The parties expect to make elections under § 338(h)(10) of the Internal Revenue Code with respect to the Transfers of the stock of the Newco Directly Transferred Targets and with respect to the deemed transfers of the stock of the Newco Indirectly Transferred Targets. Parent expects that the deemed asset sales resulting from the § 338(h)(10) elections with respect to the Newco Transferred Targets will generate a net ordinary loss, life insurance company loss from operations, or both (the “§ 338(h)(10) Loss”) and net capital gain, which, together with operating income and loss, will be reported on the Parent Group’s tax return for the taxable year ending on the closing date of the Merger (the “Closing Date”), Date 5.

On or before the Closing Date, Newco and Acquiring (or certain subsidiaries of each, as applicable) entered into a Separation Agreement, a Tax Matters Agreement, a Transition Services Agreement, the Reinsurance Agreement, and the Novation Agreement.

### **Representations**

The following representations are made with regard to the Completed Transactions:

(a) All of the stock of each of the applicable Newco Directly Transferred Targets was acquired by Newco Sub in a single transfer by either Parent or Sub 1, as applicable, as described in Step (vii) of the Completed Transactions.

(b) For the taxable period that included the Transfers, each Newco Transferred Target was a “consolidated target” within the meaning of § 1.338(h)(10)-1(b)(1) of the Income Tax Regulations, and Parent and Sub 1 were members of the selling consolidated group (within the meaning of section 338(h)(10)(B)).

(c) The terms of the Preferred Stock Sale Agreement pursuant to which Parent and Sub 1 sold the Newco Preferred Stock and the terms of the Newco Preferred Stock were determined pursuant to arm's-length negotiations with the Investors.

(d) The fair market value of the assets of each Newco Transferred Target with respect to which a § 338(h)(10) election will be made will exceed its liabilities at the closing of Step (xi) of the Completed Transactions.

(e) There is no plan or intention for Newco or Newco Sub to cease to remain in existence as separate corporations for federal income tax purposes.

(f) The Newco Preferred Stock will constitute stock in Newco (and not indebtedness) for federal income tax purposes.

(g) At the time Parent and Sub 1 sold the Newco Preferred Stock to the Investors, there was no current plan or intention to redeem the Newco Preferred Stock before the mandatory redemption date, ff years after issuance.

(h) Immediately after the Merger, Newco Sub would not be attributed under § 318 the ownership of any stock owned by Parent or Sub 1. In addition, the distribution of Newco common stock to the public shareholders of Parent described in Step (xi) of the Completed Transactions and the sale of the Newco Preferred Stock to Investors described in Step (viii) of the Completed Transactions were not to parties whose ownership of Newco stock would be attributed to Parent or Sub 1 pursuant to § 318. In measuring attributed ownership under § 318 for these purposes, there shall be taken into account all events occurring or contemplated during the period beginning with Step (i) and ending with the completion of Step (xi) of the Completed Transactions.

(i) The Completed Transactions would have been pursued by Parent regardless of whether the § 338(h)(10) Loss would be recognized.

(j) Parent and Sub 1, on the one hand, and Newco, Newco Sub, and the Newco Transferred Targets, on the other hand, ceased to be members of the same "controlled group" as defined in § 267(f)(1) upon the consummation of the Merger.

(k) The distribution of Newco common stock (and Business B) to shareholders of Parent was not engaged in or structured with a principal purpose to avoid the provisions of § 267(f) or § 1.267(f)-1 (including, for example, by avoiding treatment as an intercompany sale or by distorting the timing of losses or deductions) within the meaning of § 1.267(f)-1(h).

(l) Parent will not make the election described in § 172(b)(3) to waive the carryback period with respect to net operating losses with respect to the taxable year

that ends on the Closing Date, and has not made nor will make any other election which would preclude the carryback of any portion of such losses.

(m) Parent will not make the election to waive the carryback period described in § 810(b)(3) with respect to the taxable year that ends on the Closing Date, and has not made nor will make any other election which would preclude the carryback of any portion of such losses.

(n) Newco and Newco Sub will file a consolidated return (within the meaning of § 1501) that includes Newco and Newco Sub and all of their direct and indirect subsidiaries that are “includible corporations” under § 1504(b) for the first taxable year beginning after the Completed Transactions.

(o) Neither Newco nor any of its affiliates has purchased, or has any plan to purchase, any stock of Parent, Sub 1 or Acquiring, other than any stock of Acquiring purchased for investment purposes by Business B subsidiaries in the ordinary course of their business.

(p) Except for any asset described in § 1.338-8(d)(2), neither Newco nor Newco Sub acquired from any Newco Transferred Target any asset described in § 1.338-8(b)(1) after application of § 1.338-8(b)(2)) during the consistency period (within the meaning of § 338(h)(4)).

### **Rulings**

Based solely on the information submitted and representations set forth above, we rule as follows with regard to the Completed Transactions:

(1) Newco Sub’s acquisitions of the stock of the Newco Directly Transferred Targets from Parent and Sub 1 in the Completed Transactions will qualify as “qualified stock purchases” within the meaning of § 338(d)(3) (“QSPs”).

(2) Assuming that a § 338(h)(10) election is made with respect to its direct shareholder (whether a Newco Directly Transferred Target or another Newco Indirectly Transferred Target, as applicable), the deemed sale of the stock of an applicable Newco Indirectly Transferred Target resulting from the deemed asset sale of the Direct Owner will qualify as a QSP.

(3) Parent (as the common parent of the selling consolidated group), on the one hand, and Newco Sub (by the common parent of its consolidated group), on the other hand, will be eligible to make the election under § 338(h)(10) in respect of the QSP of the stock of each of the Newco Directly Transferred Targets sold by either Parent or Sub 1.

(4) Assuming that a § 338(h)(10) election is made with respect to its direct shareholder (whether a Newco Directly Transferred Target or another Newco Indirectly Transferred Target, as applicable), Parent (as the common parent of the selling consolidated group) and Newco Sub (by the common parent of its consolidated group) will be eligible to make the election under § 338(h)(10) in respect of the QSP of the stock of each of the applicable Newco Indirectly Transferred Targets.

(5) The Parent Group will be entitled to deduct in the taxable year of the Parent Group ending on the Closing Date, to the extent otherwise deductible, losses recognized by the Newco Transferred Targets on the deemed sales of their assets under § 267(f)(2)(B), § 1.267(f)-1(c), and § 1.1502-13, in each case, to the extent applicable.

(6) The Parent Group, to the extent that it has a loss from operations (within the meaning of § 810(c)) for the short taxable year ending on the Closing Date, will be required to carry back a portion of such loss from operations to Parent Group's U.S. federal income tax returns for the taxable years specified in § 810(b)(1), pursuant to § 1.1502-47.

(7) The Parent Group, to the extent that it has net operating losses for the short taxable year ending on the closing date, will be required to carry back a portion of the net operating losses to Parent Group's U.S. federal income tax returns for the taxable years specified in § 172(b)(1), pursuant to § 1.1502-21.

(8) Neither Newco nor Newco Sub will be a successor to Parent for purposes of § 1504(a)(3); therefore Newco and its direct and indirect subsidiaries that are "includible corporations" (under § 1504(b), § 1504(c) and § 1.1502-47) and that satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal income tax return with Newco as the common parent immediately following the Merger.

### **Caveats**

We express no opinion about the tax treatment of the Completed Transactions under other provisions of the Code and regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Completed Transactions that are not specifically covered by the above rulings. In addition, we express no opinion regarding the application of the corporate equity reduction transaction rules of §§ 172(b)(1)(E) and 172(h), the application of § 1.338-11, or whether any entity is treated as an insurance company for federal income tax purposes.

### **Procedural Statements**

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

In accordance with the power of attorney on file in this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

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Maury Passman  
Assistant to the Branch Chief, Branch 1  
Office of Associate Chief Counsel  
(Corporate)